



1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:300. Third-party claims.

6 RELATES TO: KRS 224.60-120, 224.60-130(1)(c), (e), [(2)(e), (e)], 224.60-140(2)(b),
7 (17), 40 CFR Part 280 Subpart H

8 STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(c) [(2)(e)]

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(c) [(2)(e)]
10 requires the establishment of a Financial Responsibility Account [~~financial responsibility~~
11 ~~account~~] to reimburse eligible petroleum storage tank owners and operators for compensating
12 third parties for bodily injury and property damage. This administrative regulation establishes the
13 procedure for eligible petroleum storage tank owners or operators to receive reimbursement or
14 payment for third-party claims.

15 Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury
16 and property damage, asserted against an owner or operator as a result of [a] sudden or
17 nonsudden accidental releases [~~release~~] into the environment from a petroleum storage tank at a
18 facility eligible for participation in the Financial Responsibility Account.

19 (2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement
20 or payment for a third-party claim if:

1 (a) The owner or operator has been issued a “Certificate of Registration and
2 Reimbursement Eligibility” DEP 7113 (January 2006), incorporated by reference in 401 KAR
3 42:020, and has maintained compliance with the eligibility requirements of the Financial
4 Responsibility Account pursuant to 401 KAR 42:250; and

5 (b) The cabinet has approved the “Application for Assistance” DEP 6063 (January 2006),
6 incorporated by reference in 401 KAR 42:250, pursuant to the provisions of 401 KAR 42:250.

7 ~~[(2) An owner or operator shall be eligible to receive reimbursement or payment for a~~
8 ~~third-party claim if he has been issued a certificate of eligibility pursuant to the provisions of 401~~
9 ~~KAR 42:260 and has maintained compliance with the eligibility requirements of 401 KAR~~
10 ~~42:260.]~~

11 (3) A petroleum storage tank owner or operator shall be eligible to receive reimbursement
12 or payment for a third-party claim if a Certificate of Eligibility was issued, and an Application
13 for Assistance was approved, by the cabinet prior to the effective date of this administrative
14 regulation, and the owner or operator has maintained compliance with the eligibility
15 requirements for participation in the Financial Responsibility Account in effect at the time of
16 approval.

17 ~~[A claim for property damage shall be paid to the extent that the damages are not~~
18 ~~addressed by the performance of corrective action.~~

19 ~~(4) A third-party claim shall be paid to the extent specified in 401 KAR 42:090.]~~

20 (4) If a petroleum storage tank owner or operator receives a written notice from the
21 cabinet indicating noncompliance with the eligibility requirements of the Financial
22 Responsibility Account pursuant to 401 KAR 42:250, the petroleum storage tank owner or
23 operator shall only be eligible for reimbursement of the costs of third-party claims brought

1 against the petroleum storage tank owner or operator within sixty (60) days from the date of the
2 written notice.

3 Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a
4 third-party claim, an eligible owner or operator shall notify the cabinet of the assertion of the
5 third-party claim within twenty-one (21) days of the filing of an action against the owner or
6 operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

7 (2) A third-party claim shall be paid on the basis of:

8 (a) A final and enforceable judgment; or

9 (b) An agreement reviewed and approved by the cabinet [secretary].

10 (3) Settlement of claims.

11 (a) A settlement of a third-party claim shall not be made by an owner or operator without
12 the prior approval of the cabinet.

13 (b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator
14 for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or
15 operator which was:

16 1. Not submitted to the cabinet for consideration; or

17 2. Previously approved by the cabinet.

18 Section 3. Payment of Claims. (1) Claim payment shall be limited to actual damage
19 caused by the release of petroleum.

20 (2) A claim for property damage shall be paid to the extent that the damages are not
21 addressed by the performance of corrective action.

22 [~~Payment shall be made to the third party after approval by the secretary.~~]

1 (3) The aggregate amount of payment of all third-party claims shall not exceed
2 \$1,000,000 per occurrence of a release.

3 (4) The cabinet shall acquire by subrogation the right of the third-party to recover, from
4 the person responsible or liable for the release, the amount of damages paid to the third-party.

5 (5) Reimbursement for third party claims shall be made in accordance with Section 2 of
6 401 KAR 42:290.

7 (6) Payment shall be made to the third party after approval by the cabinet.

401 KAR 42:300 is approved for filing.

4-12-2006

Date

John W. Clay

John W. Clay, Deputy Secretary
Environmental and Public Protection Cabinet

for

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2006 at 10:00 AM (Eastern Time) at the Capital Plaza Tower Auditorium, 500 Mero Street, Room 228, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Bruce Scott, P. E., Director
Division of Waste Management
14 Reilly Road
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 42:300

Contact person: Bruce Scott, Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes requirements and procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third party damage incurred from a release from petroleum storage tanks.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements and procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for personal injury or property damage.
- (c) How this administrative regulations conforms to the content of the authorizing statutes: This administrative regulation conforms by establishing the requirements and procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists by establishing the requirements and procedures for eligible petroleum storage tank owners or operators to compensate third parties for bodily injury and property damage.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment continues to establish the requirements and procedures for a third party to seek reimbursement of costs from bodily injury or property damage, as incurred from a release from petroleum storage tanks.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to maintain the requirements and procedures for third party claims.
- (c) How the amendment conforms to the context of the authorizing statutes: This amendment conforms by establishing procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment assists by establishing procedures for eligible petroleum storage tank owners or operators to receive reimbursement or payment to compensate third parties for bodily injury and property damage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect those individuals that own and operate underground storage tanks in the Commonwealth of Kentucky,

approximately 13,400. UST contractors that operate in the Commonwealth of Kentucky and persons who might file a third party claim will also be affected by this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment proposes to reflect the cabinet reorganization with changes to form titles and submittal requirements. The cabinet expects no significant impact from this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

- (a) Initially: There will be no costs associated with implementation of this administrative regulation.
- (b) On a continuing basis: There will be no additional costs associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation is funded through two federal grants and the petroleum environmental assurance fee described in KRS 224.60-145.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.)

No tiering is applied. This administrative regulation applies to all owners and operators of USTs that meet the requirements of the Financial Responsibility Account.

FISCAL NOTE ON LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 42:300

Contact person: Bruce Scott, Director

Phone Number: (502) 564-6716

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No If yes, complete question 2 to 4. If no, you do not need to file this form.

2. State what unit, part, or division of local government this administrative regulation will affect.

This amendment may affect local governments that own or operate USTs.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation.

This amendment relates to the agents of local government that own or operate USTs. KRS 224.60-120 and 224.60-130 authorize the promulgation of this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No effect.

Expenditures (+/-): See below.

Other Explanation: This administrative regulation may have an adverse effect on the expenditures of local government. This administrative regulation requires that the cabinet be notified within 21 days of the filing of a third party action against an owner or operator. This administrative regulation also requires that an owner or operator obtain the cabinet's approval prior to accepting or rejecting a settlement offer. Should an owner or operator fail to adhere to these requirements, the potential exists that the deciding party may be liable for those damages.